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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 231

WABANINGO BOY SCOUT CAMP,
A Michigan Nonprofit Corporation,

Appellant,

vs.

MICHIGAN STATE TAX COMMISSION,

Appellee.

No. 232

EVANSTON Y.M.C.A. CAMP,
A Michigan Nonprofit Corporation,

Appellant,

vs.

MICHIGAN STATE TAX COMMISSION,

Appellee.

Appeals from the Supreme Court of Michigan

STATEMENT AS TO JURISDICTION

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Appeals from the Supreme Court of Michigan

STATEMENT AS TO JURISDICTION

A single jurisdictional statement covering both of these cases is being filed under Rule 15(3).

Opinions Below

The opinions of the Supreme Court of Michigan in both cases appear in the Appendix hereof. *Wabaningo Boy Scout Camp* is reported in 369 Mich. 165, 119 N.W. 2d 648, and

Y.M.C.A. Camp in 369 Mich. 1, 118 N.W. 2d 818. The opinion in *Wabaningo* is a brief judgment based on the full opinion in *Y.M.C.A. Camp.*

Nature of the Proceedings

Appellants brought these actions in the Supreme Court of Michigan to review orders of the Michigan State Tax Commission holding appellants' real estate correctly assessed for taxation. Michigan Statutes Ann. 1960, §§ 27.2601, 27.2602; Rule 60 Michigan Court Rules; *In re Dearborn Clinic and Diagnostic Hospital,* 342 Mich. 673, 71 N.W. 2d 212 (1955).

Appellants contended that the Commission's orders erroneously construed a Michigan statute, and that as so construed the statute deprived appellants of equal protection of the laws in violation of the Fourteenth Amendment in that it denied appellants tax exemption, accorded generally to Boy Scout and Y.M.C.A. organizations, on the sole ground that appellants' members are nonresidents of Michigan. The Court affirmed the Commission's orders, sustained the Commission's construction of the statute (Appendix 8a-10a), and held that the statute did not violate the Fourteenth Amendment (App. 10a-12a).

Judgments Below

In *Wabaningo Boy Scout Camp* the opinion of the Supreme Court of Michigan was filed February 6, 1963, and motion for rehearing was denied April 5, 1963. In *Y.M.C.A. Camp* the Court's opinion was filed December 31, 1962, and motion for rehearing was denied February 5, 1963. Notice of appeal in each case was filed April 30, 1963, in the office of the Clerk of the Supreme Court of Michigan.

Statutory Basis for Jurisdiction

The jurisdiction of this Court to review on appeal the judgments of the Supreme Court of Michigan is conferred by 28 U.S.C. § 1257(2).

Cases Sustaining Jurisdiction

Cases which sustain the jurisdiction of this Court are *Wheeling Steel Corporation* v. *Glander*, 337 U.S. 562, 568 note 3 (1949); *Atchison, Topeka & Santa Fe Railway Co.* v. *Public Utilities Commission*, 346 U.S. 346, 347-349 (1953); *Home Insurance Co.* v. *Dick*, 281 U.S. 397, 407 (1930).

Statute Involved

The Michigan statute, validity of which is involved, is the following, the pertinent part being set out in our own italics (Paragraph Fourth of section 7 of the general property tax act as amended by P.A. 1960, No. 155 (C.L. 1948, § 211.7 [Stat. Ann. 1960 Rev. § 7.7, as amended])):

"The following property shall be exempt from taxation:—

* * * *

"Fourth, Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated. Also charitable homes of fraternal or secret societies. *Also real estate not to exceed 400 acres of land in this state owned by any boy or girl scout organization, or by young men's Christian associations or young women's Christian associations, if at least 50% of the membership of the associations or organizations are residents of this state, while occupied by them solely for the purpose for which they were incorporated or established.* Also real estate, with the

buildings and other property thereon, owned and occupied by any non-profit trust and used for hospital or public health purposes; * * *" (Emphasis added).

Question Presented

Whether the statute deprives appellants of equal protection of the laws, in violation of the 14th amendment, by denying them exemption from taxation solely because more than 50 per cent of their membership are nonresidents, while like organizations are exempt if at least 50 per cent of their membership are residents.

Statement of the Case

Each appellant is a non-stock, non-profit, membership corporation of the state of Michigan.

The articles of appellant Wabaningo Boy Scout Camp provide that it shall have twelve corporate members who shall be members of and shall be elected by Evanston Council of the Boy Scouts of America, an Illinois non-profit corporation. Appellant Wabaningo Boy Scout Camp owns 350 acres of improved real estate in Michigan which is used for camping by the Boy Scouts and adult leaders of Evanston Council of the Boy Scouts of America. These are residents of Illinois.

The articles and by-laws of appellant Evanston Y.M.C.A. Camp provide that it shall have ten corporate members who shall be members of and shall be elected by Evanston, Illinois, Y.M.C.A. Appellant Evanston Y.M.C.A. Camp owns 67 acres of improved real estate in Michigan which is used for camping by the members of Evanston Y.M.C.A. These are residents of Illinois.

Before the enactment of the statute here in issue all Boy Scout and Y.M.C.A. organizations were accorded exemp-

tions from taxation by the Michigan laws without any distinctions as to residence. Y.M.C.A. property was wholly exempt. Boy Scout property up to 160 acres was exempt.

By paragraph "Fourth" above set out, effective August 17, 1960, these exemption provisions were changed to provide that Boy Scout and Y.M.C.A. organizations shall have no exemption whatsoever from taxation if more than 50 per cent of their membership are residents of states other than Michigan, whereas such organizations shall have 400 acres exempt if at least 50 per cent of their membership are Michigan residents.

The words "member" and "membership" are used in the Michigan statutes authorizing the creation and operation of non-profit corporations to mean the organizers and corporate members of such corporations. On the assumption that the word "membership" in paragraph Fourth had the meaning employed in the corporation statutes, each appellant amended its articles of incorporation to provide that at least 50 per cent of its members shall be residents of Michigan. Then six residents of Illinois and six residents of Michigan were elected the corporate members of appellant Wabaningo Boy Scout Camp by Evanston Council of the Boy Scouts of America; and five residents of Illinois and five residents of Michigan were elected the corporate members of appellant Evanston Y.M.C.A. Camp by Evanston Y.M.C.A. These corporate actions were completed before December 31, 1960, the "tax date" determining the status of persons and property for 1961 taxes. (See App. 10a).

Thereafter each appellant presented timely representations to the Michigan tax officials that it was entitled to exemption from 1961 taxes because 50 per cent of its membership were residents of Michigan. But these officials up to and including the Michigan State Tax Commission, appellee

herein, denied the exemptions requested. The Tax Commission held that the word "membership" in paragraph "Fourth" did not mean the corporate members of appellants but that it meant instead the Boy Scouts and Y.M.C.A. members using the camps, who are residents of Illinois. The Tax Commission therefore held that each appellant's real estate was correctly assessed for 1961 taxes.

Appellants then brought these actions in the Supreme Court of Michigan alleging (1) that the Tax Commission erred in holding on the facts above set forth that appellants were not entitled to exemption, and (2) that the construction of the statute adopted by the Commission deprived appellants of equal protection of the laws in violation of the 14th Amendment in that it made exemption turn on whether the Boy Scouts or Y.M.C.A. members using the camps were residents or nonresidents of Michigan. But the Court approved the Commission's construction of the statute (App. 8a-10a) and held that it did not violate the 14th Amendment (App. 10a-12a). The Court summarized its Constitutional holding as follows (App. 12a):

> "The clause 'if at least 50% of the membership of the associations or organizations are residents of this state' is not unconstitutional and invalid as a discrimination based on residence prohibited by section 1 of the Fourteenth Amendment to the Federal Constitution guaranteeing equal protection of the law."

The Federal Question Is Substantial

1.

The Supreme Court of Michigan has here approved a form of ad valorem tax discrimination against appellants that has been uniformly condemned by this Court. A statute granting tax exemption to a class violates the equal protection clause insofar as it denies exemption to part of the

class solely on the basis of nonresidence. *Wheeling Steel Corporation* v. *Glander*, 337 U.S. 562, 572 (1949); *Hanover Fire Insurance Co.* v. *Harding*, 272 U.S. 494, 516 (1926); *Travis* v. *Yale & Towne Manufacturing Co.*, 252 U.S. 60, 79-80 (1920); *Southern Railway Company* v. *Greene*, 216 U.S. 400, 417-418 (1910). And see concurring opinion in *Allied Stores* v. *Bowers*, 358 U.S. 522, 530-533 (1959). In *Travis*, *supra*, the denial to nonresidents of a tax exemption accorded residents was held violative of the privileges and immunities guaranty of Section 2 of Article 4; but as the other cases in this paragraph show, the statute in *Travis* would have been vulnerable under the equal protection clause. (Violation of both equal protection and privileges and immunities was alleged in *Travis*, pp. 72-73.) "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." *Hillsborough Township* v. *Cromwell*, 326 U.S. 620, 623 (1946). In respect to taxation, "the federal right of a nonresident 'is the right to equal treatment.'" *Wheeling Steel Corporation* v. *Glander*, *supra* (p. 572).

2.

The Court apparently rested its decision on the following conclusions in its opinion (App. 11a):

> "This is not a case where the legislature singled out a particular class denoted 'nonresidents' for the purpose of imposing a tax. *No discrimination between 'residents' and 'nonresidents' is involved, since appellant is a Michigan corporation.* (Emphasis added)
>
> "The only constitutional question refers to the power of the legislature to classify property for ad valorem property tax exemptions by determining it would exempt from taxation certain associations and organiza-

tions when 50% of their membership resided in Michigan."

While the construction by the Supreme Court of Michigan, that the word "membership" in the statute means the campers attending the camps, is not subject to review here, this Court will exercise its independent judgment in determining whether the statute as so construed and as otherwise characterized and applied by the Michigan Court violates the 14th Amendment. *Hanover Fire Insurance Co.* v. *Harding*, *supra*, 272 U.S. 494, 509. Whatever the breadth or narrowness of the Michigan Court's decision holding the 14th Amendment not violated, appellants are entitled to full consideration of the Constitutional question here. *Lawrence* v. *State Tax Commission of Mississippi*, 286 U.S. 276, 281-283 (1932); *National Association For The Advancement of Colored People* v. *Alabama*, 357 U.S. 449, 454-455 (1958).

The conclusions of the Michigan Court set forth above are palpably erroneous. The classification made by paragraph Fourth has only one element, the residence or nonresidence of appellants' membership, the Boy Scouts or Y.M.C.A. members using the camps. The statute has no other effect as construed by the Supreme Court of Michigan but to discriminate against appellants because appellants' membership as defined by the Court are nonresidents.

The basis of the Court's conclusions, that paragraph Fourth works no discrimination against nonresidents because appellants are Michigan corporations, apparently expresses a holding that appellants are not affected by the statute and lack standing to object to it. This holding is directly at odds with many decisions of this Court. Since the denial of tax exemption rests entirely on the nonresidence of appellants' membership as defined by the Court, there is discrimination between residents and nonresidents

that brings appellants within the protection of *Wheeling Steel Corporation* v. *Glander*, *supra*, 337 U.S. 562, 572, and the other cases cited with it, because of the close relationship between each appellant and its membership and the direct and substantial impact of paragraph Fourth upon appellants due to that relationship. This is made clear by this Court in a number of related applications of the principle.

First, *National Association for the Advancement of Colored People* v. *Alabama*, *supra*, 357 U.S. 449, 459-460; *International Harvester Co.* v. *Wisconsin Department of Taxation*, 322 U.S. 435, 440 (1944); *Voeller* v. *Neilston Warehouse Company*, 311 U.S. 531, 537 (1941). These cases hold that where a corporation is substantially affected by state action which deals unconstitutionally with its members or stockholders, it may challenge the constitutional validity of that action. Cf. concurring opinion in *First Unitarian Church of Los Angeles* v. *County of Los Angeles*, 357 U.S. 545, 547 (1958).

Second, *Travis* v. *Yale & Towne Manufacturing Co.*, *supra*, 252 U.S. 60, 75. A state income tax law required employers to deduct the tax from employees' earnings and granted resident employees a tax exemption not given to nonresident employees. The employer as sole complainant was permitted to attack the unconstitutional discrimination against nonresident employees because of the possible impact of the act upon the employer.

Third, *Pierce* v. *Society of Sisters*, 268 U.S. 510, 530, 534-536 (1925); *Truax* v. *Raich*, 239 U.S. 33, 38-39 (1915); *Buchanan* v. *Warley*, 245 U.S. 60, 72-73 (1917). The principle of these cases is exemplified in *Pierce*, *supra*, where an Oregon statute operating solely upon parents and requiring them to send children below the 9th grade to public schools was held violative of the 14th Amendment as to and

upon the suit of a private school because of the impact upon private schools of the unconstitutional restriction upon parents.

Fourth, appellants as owners of the taxed real estate and by virtue of total corporate integration and identity with Evanston Council of the Boy Scouts of America and Evanston Y.M.C.A. have standing respectively to assert every consitutional right extending to Evanston Council, Evanston Y.M.C.A., and the affected boy scouts and Y.M.C.A. members, which is impinged by paragraph Fourth. *National Motor Freight Traffic Association, Inc.* v. *United States*, 372 U.S. 246 (1963).

3.

Wabaningo Boy Scout Camp is obviously a "boy scout organization" within the meaning of paragraph Fourth, whose "membership" as construed by the Court below is the Boy Scouts using the camp. And see 36 U.S.C. § § 21-29, incorporating the "Boy Scouts of America" as a national corporation, particularly § 27 which limits the use of the term "Boy Scouts" to licensees of the national corporation. Similarly, Evanston Y.M.C.A. Camp is a "young men's Christian association" under paragraph Fourth.

There are 17 councils of the Boy Scouts of America established within Michigan with Boy Scout enrollment in 1961 ranging from 1,355 in the smallest to 25,998 in the largest. (House Doc. No. 369, 87th Cong. 2d Sess., pp. 216-218, Annual Report to Congress, 1961, of the Boy Scouts of America, pursuant to 36 U.S.C. § 28). Thus there is a substantial class exempted by paragraph Fourth. We believe that this Court may take judicial notice that the Y.M.C.A., like the Boy Scouts, have numerous local organizations in all states including Michigan. It must be presumed, as adverted to by the Court below (App. 10a, 11a), that the legislature knew

of the existence of a class that would be favored by the exemption.

It should be noted that the terms of paragraph Fourth that deny tax exemption if more than 50 per cent of the membership are nonresidents are tantamount in practical effect to a denial of exemption if *any* of the membership are nonresidents. This is so because individual Boy Scout councils and young men's Christian associations are organized within geographical subdivisions of states. Thus the members of these organizations are residents of a particular geographical area within a state.

Effect of the 1961 Amendment of Paragraph Fourth

The Michigan legislature amended paragraph Fourth in 1961 by adding to the clause "if at least 50% of the membership of the associations or organizations are residents of this state" the following (App. 4a-5a):

> "but upon petition of any association or organization the Board of Supervisors may waive the residence requirement."

The Michigan Court held that this amendment, which became effective August 6, 1961, could have no application to liability for the 1961 taxes here in issue since that liability was determined under the Michigan statutes as of December 31, 1960. (App. 9a-10a).

But it should be noted that the 1961 amendment does not in any respect relieve paragraph Fourth from the unconstitutionality that existed before the amendment became effective. Thus the amendment does not have the effect of limiting the constitutional question to only one year's taxes. Since the residence requirement of paragraph Fourth was invalid before the 1961 amendment, the granting to the Board of Supervisors of absolute discretion either to waive

or to refuse to waive the unconstitutional residence requirement does not make paragraph Fourth any less objectionable under the Fourteenth Amendment. *Chicago* v. *Atchison, Topeka & Santa Fe Railway Co.*, 357 U.S. 77, 89 (1958); *Staub* v. *Baxley*, 355 U.S. 313, 319 (1958); *Public Utilities Commission of California* v. *United States*, 355 U.S. 534, 539-540 (1958); *Smith* v. *Cahoon*, 283 U.S. 553, 562 (1931).

Thus the same constitutional question exists not only as to 1961 taxes but as to taxes for all following years, despite the 1961 amendment. The validity of paragraph Fourth as to taxes after 1961 is determinable in this case. "[W]here the only question is whether it is constitutional to fasten the administrative procedure onto the litigant, the administrative agency may be defied and judicial relief sought as the only effective way of protecting the asserted constitutional right." *Public Utilities Commission* v. *United States*, *supra*, 355 U.S. 534, 540. See other cases cited in preceding paragraph. The judicial relief here being sought is just as applicable to paragraph Fourth after the 1961 amendment.

CONCLUSION

The question here, one that deeply concerns the Federal system, is so substantial as to require plenary consideration by the Court.

Respectfully submitted,

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APPENDIX

STATE OF MICHIGAN
SUPREME COURT
Filed Feb. 6, 1963

WABANINGO BOY SCOUT CAMP, a Michigan nonprofit corporation,
Plaintiff and Appellant,

v.

MICHIGAN STATE TAX COMMISSION,
Defendant and Appellee.

Before the entire Bench, except ADAMS, J.
DETHMERS, J.

The pertinent facts, questions involved, and applicable law in this case are the same as in Evanston Y.M.C.A. Camp v. State Tax Commission, 369 Mich 1. Decision in that case is controlling here.

Affirmed. No costs.

STATE OF MICHIGAN

SUPREME COURT

Filed Dec. 31, 1962

EVANSTON Y.M.C.A. CAMP,
a Michigan nonprofit corporation,
Plaintiff and Appellant,

v.

STATE TAX COMMISSION,
Defendant and Appellee.

Before the entire Bench, except ADAMS, J.

KELLY, J.

The Sherman township, Newaygo county, supervisor assessed appellant's property at a $20,000 valuation. Appellant protested, claiming the property was legally exempt. The board of review denied the petition for exemption. The State tax commission affirmed the board of review, and, on leave granted, this appeal is taken in the nature of certiorari.

Appellant was duly incorporated (November 22, 1923) as a Michigan nonprofit, nonstock, membership corporation, and its purposes were described in article 3 as follows:

> "To provide benevolent and charitable means whereby young men and boys may obtain physical, social, moral, and religious culture, and the development of Christian character through life in the out-of-doors; to hold, own, and purchase or otherwise acquire, and to sell, convey, mortgage, handle, manage, or otherwise dispose of, any real or personal property, that may,

> in the judgment of the trustees or directors of this corporation, be necessary or proper to carry out and effectuate the purposes aforesaid."

In 1923 appellant acquired less than 400 acres of land in Newaygo county and has improved same by constructing thereon a dining hall, social lodge, infirmary, 14 cabins, craft shop, warehouse, pump house, and directors' cabin.

Appellant contends the property is exempt from taxation for the year 1961 under paragraph "Fourth," of section 7 of the general property tax act as amended by PA 1960, No 155 (CL 1948, § 211.7 [Stat Ann 1960 Rev § 7.7, as amended]).

In construing said paragraph we follow the cardinal rule that effect must be given to all statutory language employed by the legislature and that the history of legislation should be considered in determining the purpose of the legislature.

In *Remus* v. *City of Grand Rapids*, 274 Mich 577, 581, we stated:

> "'"In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law. The endeavor should be made, by tracing the history of legislation on the subject, to ascertain the uniform and consistent purpose of the legislature, or to discover how the policy of the legislature with reference to the subject-matter has been changed or modified from time to time." 36 Cyc pp 1147-1149.' (Quoted in *Miles, ex rel. Kamferbeek*, v. *Fortney*, 223 Mich 552, 558.)"

The history of the act in question discloses that the pertinent portion of paragraph "Fourth" has been amended 4 times since 1938. Prior to its amendment by PA 1939,

No 232, this paragraph contained only 2 sentences, and read as follows:

> "Fourth, Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated. Also charitable homes of fraternal or secret societies."

PA 1939, No 232, added 1 additional sentence:

> *"Also real estate owned by any boy or girl scout organization, while occupied by them solely for the purpose for which they were incorporated or established."*

This sentence, however, was amended by PA 1941, No 125, to read:

> "Also real estate *not to exceed 160 acres of land* owned by any boy or girl scout organization, while occupied by them solely for the purpose for which they were incorporated or established."

PA 1960, No 155, again amended this sentence so that it read:

> "Also real estate not to exceed *400* acres of land *in this state* owned by any boy or girl scout organization, *or by young men's Christian associations or young women's Christian associations, if at least 50% of the membership of the associations or organizations are residents of this state,* while occupied by them solely for the purpose for which they were incorporated or established."

This same sentence was last amended by PA 1961, No 238, by inserting between the words "state" and "while," the following language: *"but upon petition of any associa-*

tion or organization the board of supervisors may waive the residence requirement."

It is appellant's position that 4 categories of exempt property are provided by said paragraph "Fourth" and that each of the 4 sentences thereof contains a description of at least 1 such category that is separate and distinct from the others; that appellant's real estate falls within the scope of the category of the first sentence which exempts real estate owned and occupied by "benevolent, charitable, educational * * * institutions" and, also, by the third sentence exempting real estate of "young men's Christian associations or young women's Christian associations."

Appellant, citing Ready-Power Company v. City of Dearborn, 336 Mich 519, states that it is a "fundamental principle that tax laws are to be construed liberally in favor of the taxpayer."

Appellant raises the following question:

> "Is there any evidence in the certified original record to support the order of the tax commission determining that such real estate of appellant is correctly assessed and that the assessment has been made in compliance with law?"

Appellant evidently proceeds on the fallacious theory that it is entitled to exemption unless the commission established that it was not entitled to an exemption.

While it is true that the imposition provisions of a taxing statute should be construed in favor of the taxpayer, this rule of construction does not supplant or eliminate the important rule to be applied in the question here presented: That exemption provisions must be strictly construed in favor of the taxing agency.

We made this clear in City of Detroit v. Detroit Commercial College, 322 Mich 142, when we quoted 2 Cooley on Taxation (4ed), § 672, p 1403, as follows (p 149):

> "Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant.'"

When we construe statutory language containing both specific and general provisions, we adopt the rule set forth in 50 Am Jur, Statutes, § 367, p 371:

> "Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision."

See, also, Dossin's Food Products, Inc. v. State Tax Commission, 360 Mich 312; Mayor of Port Huron v. City Treasurer of Port Huron, 328 Mich 99.

Is appellant's property exempt under the category provided by the first sentence of paragraph "Fourth" exempting the following:

> "Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated?"

Appellant did not claim the right of exemption under the provisions referring to charitable, benevolent or educational institutions at the hearing before the board of review or the State tax commission.

Appellant matched the legislature's 1960 amendment granting young men's Christian associations exemption on 400 acres of land if 50% of the membership are residents of the State, by executing (November 30, 1960) an amendment to its articles of incorporation and filing a certificate of same with the Michigan corporation and securities commission disclosing:

> "The qualifications required of officers and members are as follows:—That they be members in good standing of the Y.M.C.A. of Evanston, Illinois, provided, at least 50% of such members shall be residents of the State of Michigan."

We quote with approval the following from appellee's brief:

> "The argument of appellant that the general benevolent, charitable and educational exemption is applicable to it, is untenable. Such an argument gives no effect whatsoever to the restrictive language added to paragraph Fourth by PA 1960, No 155, which amendatory language specifically provides that only those Y.M.C.A.

organizations that meet the resident membership requirement therein set forth are entitled to the property tax exemption therein granted. Such an argument gives no effect to the specific statutory language applicable to Y.M.C.A. organizations and thereby violates a cardinal rule of construction that effect must be given to all statutory language employed by the legislature.* * *

"In arguing that it is entitled to this general exemption as well as to the specific exemption granted Y.M.C.A. organizations, appellant overlooks another cardinal rule of construction which requires the special provisions of an enactment to be read as exceptions to general provisions."

We hold that appellant was not entitled to an exemption under the first sentence of paragraph "Fourth."

Is the real estate of appellant exempt from taxation as falling within the category of the third sentence of the controlling statute, exempting real estate of young men's or young women's Christian associations?

Appellant defines the word "membership" as used in the statute as follows:

"Clearly, the 'ordinary meaning' of the term 'membership' in this statute, as claimed by appellee, does not extend to the campers occupying the camp maintained by the corporation, who need no affiliation whatever with the corporate organization of appellant.

"It is more reasonable to conclude that the legislature imposed the residential requirement to apply to those members who were so charged with the responsibility of the management of the corporate affairs, as to facilitate the enforcement of sanitary and other state laws and regulations, with respect to its operations. This would be an 'ordinary meaning' of the term 'membership,' and not mere formalism."

Appellee answers such contention by stating:

> "It is a strange and constrained construction of the statutory language in question to presume that the legislature, in granting real estate exemptions to young men's and young women's Christian organizations, was concerned with the place of residence of 5 members of the Evanston, Illinois, Y.M.C.A. rather than the utilization of the properties by the youth of this State. It thus seems reasonable to conclude that the legislature used the term 'membership' in the ordinary context when it referred to membership in a young men's Christian organization.
>
> "Undoubtedly, the exemption in question pertains to the concern of the Michigan legislature to make provision for camp and recreation facilities for its youth. To hold otherwise would place empty formalism over substance."

The construction of appellant that the legislature was concerned with "those members who were so charged with the responsibility of the management of the corporate affairs," plus appellant's contention that the legislature used the word "membership" as it used that word in the corporation law, does not meet the fact that the exemption was not confined to corporation but also included unincorporated organizations and associations.

The legislature emphasized the importance it placed upon the 1960 amendment to paragraph "Fourth" providing that "at least 50% of the membership of the associations or organizations are residents of this state," by the 1961 amendment to the same sentence providing that "upon petition of any association or organization the board of supervisors may waive the residence requirement."

The order from which this appeal is taken determined that appellant's land was correctly assessed for 1961 taxes,

and there is merit to appellant's contention that the 1961 amendment to paragraph "Fourth" does not apply to the 1961 assessment because of section 2 of the general property tax act, which reads in part as follows:

> "The taxable status of persons and real property after January 1, 1958, shall be determined as of December 31, 1958, and each December 31 thereafter, which shall be deemed the tax day." CL 1948, § 211.2, as amended by PA 1958, No 209 (Stat Ann 1960 Rev § 7.2).

It is our opinion that the legislature in adopting the 1960 amendment was motivated by a desire to assist the youth of this State rather than by a concern "to facilitate the enforcement of sanitary and other state laws and regulations, with respect to its (the association's) operation," and we hold that the commission did not err in finding that appellant's property was not exempt from taxation by the third sentence of paragraph "Fourth" exempting real estate of "young men's Christian associations or young women's Christian associations."

Is the clause "if at least 50% of the membership of the associations or organizations are residents of this State" unconstitutional and invalid as a discrimination based on residence prohibited by section 1 of the Fourteenth Amendment to the Federal Constitution guaranteeing equal protection of the law?

> "One who assails the constitutionality of a statute must stand on his own right to relief." Duckworth v. Arkansas, 314 US 390, 397.

> "It is a well-established rule of constitutional law that one who would strike down a statute as unconstitutional 'must bring himself, by proper averments and showing, within the class as to whom the act thus attacked is unconstitutional.'" General Motors Corporation v. Attorney General, 294 Mich 558, 566.

This is not a case where the legislature singled out a particular class denoted "nonresidents" for the purpose of imposing a tax. No discrimination between "residents" and "nonresidents" is involved, since appellant is a Michigan corporation.

The only constitutional question refers to the power of the legislature to classify property for ad valorem property tax exemptions by determining it would exempt from taxation certain associations and organizations when 50% of their membership resided in Michigan. We dealt with the power of classification in Banner Laundering Co. v. State Board of Tax Administration, 297 Mich 419, and in deciding that case we quoted from Citizens' Telephone Co. v. Fuller, 229 US 322, as follows (pp 432, 433):

> "'It is manifest, therefore, that there are marked differences between the taxed and nontaxed companies, and the differences might be pronounced arbitrary if the rule urged by appellant should be applied, that is, that in the taxation of property no circumstance should be considered but its value, or, to use appellant's words, "each dollar's worth should be treated alike." But such rigid equality has not been enforced. In Michigan the legislature has the power of prescribing the subjects of taxation and exemption, notwithstanding the Constitution of the State requires the legislature to provide a uniform rule of taxation, except on property paying specific taxes. *People* v. *Auditor General*, 7 Mich 84; *Board of Supervisors* v. *Auditor General*, 65 Mich 408; *National Loan & Investment Co.* v. *City of Detroit*, 136 Mich 451. The power of exemption would seem to imply the power of discrimination, and in taxation, as in other matters of legislation, classification is within the competency of the legislature. We said in *American Sugar Refining Co.* v. *Louisiana*, 179 US 89, 92 (21 S Ct 43, 45 L ed 102), that from time out of mind it has been the policy of this Government to classify for the purpose of taxation.' • • •

"'Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. *Keeney* v. *Comptroller of New York*, 222 US 525, 536 (32 S Ct 105, 56 L ed 299, 38 LRA [ns] 1139). The State is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in "clear and hostile discriminations between particular persons and classes." See *[Quong Wing* v. *Kirkendall]* 223 US 59, 62, 63 (32 S Ct 192, 56 L ed 350). Thus defined and thus limited, it is a vital principle, giving to the Government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those "discriminations which the best interests of society require."'"

The clause "if at least 50% of the membership of the associations or organizations are residents of this state" is not unconstitutional and invalid as a discrimination based on residence prohibited by section 1 of the Fourteenth Amendment to the Federal Constitution guaranteeing equal protection of the law.

The order of the State tax commission is affirmed. No costs, a public question being involved.